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4 **UNITED STATES DISTRICT COURT**

5 **DISTRICT OF NEVADA**

6 JOHN OLIVER SNOW,)
7)
8 Plaintiff,) 3:08-cv-00046-RCJ-VPC
9 vs.)
10)
11 E.K. McDANIEL et al.,) **ORDER**
12 Defendants.)
13 _____)

14 This is a prisoner civil rights action arising out of alleged deficient medical treatment.
15 Plaintiff is incarcerated on death row with the Nevada Department of Corrections (“NDOC”)
16 pursuant to his conviction for murder for hire. He sued Defendants, alleging that their failure to
17 approve and provide hip replacement surgery constituted cruel and unusual punishment. The
18 Court granted summary judgment to Defendants. The Court of Appeals reversed as to injunctive
19 relief against Defendants in their official capacities and as to damages against Defendants in their
individual capacities (except for one Defendant) and remanded for trial but otherwise affirmed.
A jury returned a verdict for Defendants.

20 Plaintiff moved under 42 U.S.C. § 1988(b) for attorney’s fees of \$190,312.50 and costs of
21 \$8603.64. Plaintiff won no verdict or settlement but argued that because NDOC offered him hip
22 surgery after the Court of Appeals reversed this Court’s grant of summary judgment and
23 remanded for trial on May 25, 2012, that he was a prevailing party for the purposes of § 1988(b).
24 The Court granted the motion in part, based on a line of Court of Appeals cases supporting fees
25 under such a theory. *See, e.g., Ward v. San Diego Cnty.*, 791 F.2d 1329, 1334 (9th Cir. 1986) (“A

1 ‘prevailing party’ for § 1988 purposes does not necessarily have to obtain formal relief. A party
2 can achieve ‘prevailing party’ status by establishing a ‘clear, *causal relationship* between the
3 litigation brought and the practical outcome realized.’” (citations omitted)).

4 Defendants have asked the Court to reconsider based on *Buckhannon Board & Care*
5 *Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598 (2001).
6 In that case, the Supreme Court was clear that formal judicial relief is necessary for an award of
7 attorney’s fees under § 1988(b):

8 We think, however, the “catalyst theory” falls on the other side of the line
9 from these examples. It allows an award where there is no judicially sanctioned
10 change in the legal relationship of the parties. Even under a limited form of the
11 “catalyst theory,” a plaintiff could recover attorney’s fees if it established that the
12 “complaint had sufficient merit to withstand a motion to dismiss for lack of
13 jurisdiction or failure to state a claim on which relief may be granted.” This is not
14 the type of legal merit that our prior decisions, based upon plain language and
15 congressional intent, have found necessary. Indeed, we held in *Hewitt* that an
16 interlocutory ruling that reverses a dismissal for failure to state a claim “is not the
17 stuff of which legal victories are made.” A defendant’s voluntary change in conduct,
18 although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit,
19 lacks the necessary judicial *imprimatur* on the change. Our precedents thus counsel
20 against holding that the term “prevailing party” authorizes an award of attorney’s fees
21 *without* a corresponding alteration in the legal relationship of the parties.

22 *Id.* at 605 (citations omitted). The application of this precedent to the present case indeed
23 forecloses an award of attorney’s fees. The Court, therefore, having clearly erred in overlooking
24 this authority, grants the motion to reconsider. Plaintiff argues only that the Court’s previous
25 ruling is the law of the case. But the Court is not bound by its own rulings in a given case, only
the rulings of higher courts. The Court is free to reverse itself, and where it recognizes a clear
error, it should do so.

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CONCLUSION

IT IS HEREBY ORDERED that the Order and Judgment (ECF Nos. 199, 200) are VACATED, the Motion to Reconsider (ECF No. 204) is GRANTED, and the Motion for Attorney's Fees and Costs (ECF No. 180) is DENIED.

IT IS SO ORDERED.

Dated: This 16th day of September, 2014.

ROBERT C. JONES
United States District Judge